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CITY OF WASHINGTON, THURSDAY MORNING, MAY 18, 1848.

IN CONGRESS OF THE U. STATES.

Thirtieth Congress—First Session.

TUESDAY, MAY 16, 1848.

HOUSE OF REPRESENTATIVES.

The journal having been read—

Mr. GOGGIN expressed the hope that it would be the pleasure of the House to permit the bills on the Speaker's table to be taken up and referred in their order.

The SPEAKER said that would be reversing the regular order of business, which was, first, reports from committees.

Mr. GOGGIN acquiesced.

REPORTS FROM COMMITTEES.

The SPEAKER then proceeded to call the committees for reports.

Mr. J. A. ROCKWELL, from the Committee of Claims, reported a bill for the relief of Archibald Beard and twenty-one others, Tennessee mounted volunteers; which was twice read, and referred to the Committee of the Whole, and ordered to be printed.

Also, a bill to authorize an increase in the number of clerks in the Treasury Department: read twice, and referred to the Committee of the Whole on the state of the Union.

Also, submitted the following resolution, viz:

Resolved, That the House bill No. 412, a bill to provide for the settlement of claims against the United States, be taken from the Committee of the Whole on the state of the Union, and made the special order for 2d Friday in June.

Objected to, and not received.

Mr. FLOURNOY, from the same committee, reported a bill for the relief of Wm. J. Turner, and a bill for the relief of Wm. P. Gouge: severally read twice, and committed.

Also, submitted an adverse report in the case of Thomas Chaney: laid on the table, and ordered to be printed.

Mr. THIBODEAUX, from the Committee on Commerce, reported a bill to establish a collection district in the State of South Carolina, and for other purposes: read twice, and referred to the Committee of the Whole on the state of the Union.

Mr. GRINNELL, from the same committee, reported a bill to authorize the issuing of a register to the brig Encarnacion: read three times, and passed.

Mr. G. also reported a bill for the relief of Philip J. Fontane: read twice, and committed.

Also, reported back the Senate bill to provide for the repair and improvement of the dam at the head of Cumberland island, in the Ohio river, with amendments: referred to the Committee of the Whole on the state of the Union.

Also, reported back the Senate act, extending privileges to American vessels engaged in a certain mentioned trade, and for other purposes, with amendments.

Mr. G. asked that the latter bill be put upon its passage. He stated that the object of the bill was to grant privileges to the line of steamers about to be established to carry the mail from New York to Havana, and thence to New Orleans. Their first vessel was to sail from New York on the 23d of the present month, and would be reduced to great embarrassments unless this bill were passed forthwith. It had been carefully prepared and well considered in the Senate; and he thought that no possible injury could result to the public interest from its passage at the present moment.

The amendments were then agreed to, and the bill was read a third time and passed.

Mr. G., also, from the same committee, asked that the Committee of the Whole on the state of the Union be discharged from the consideration of the bill to admit certain articles of the growth or production of Canada into the United States free of duty, upon the condition that the like articles of the growth or production of the United States are admitted into Canada free of duty.

Objected to, and the motion not received.

Mr. HUNT, from the same committee, reported a bill making appropriation for certain marine hospitals therein named; read twice, and committed.

Mr. HAMPTON of Pennsylvania, from the Committee on Commerce, reported a bill making appropriations for the improvement of certain rivers and harbors, and for the survey of certain other rivers and harbors: read twice, and referred to the Committee of the Whole on the state of the Union.

Mr. PUTNAM, from the Committee on Public Lands, submitted an adverse report upon the case of Evander M. Soper and others: laid on the table, and ordered to be printed.

Mr. COLLAMER, from the same committee, reported back, without amendment, the Senate bill to require the holders of military land warrants to compensate the land officers of the United States for services in locating the said warrants: read three times, and passed.

Mr. GARNETT DUNCAN, from the same committee, reported a bill to settle the title to certain tracts of land in the State of Arkansas; and a bill to authorize the location of certain adjudicated claims in Arkansas, commonly known as Lovely Donation Claims: read twice, and referred to the Committee of the Whole on the state of the Union.

Also, submitted an adverse report in the case of Archibald Laughrey: laid on the table, and ordered to be printed.

Also, a bill extending to John Whitsett's heirs the privilege of purchasing a quarter section of land which was given to him by an act approved March 2, 1839: read three times, and passed.

Mr. COBB of Alabama, from the same committee, submitted an adverse report upon the case of Alfred F. Randolph: laid on the table, and ordered to be printed.

Also, reported an act to amend an act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841; which was read twice.

Mr. TOMPKINS submitted a few remarks in support of the bill, and asked that it be put upon its passage.

Mr. CONGER moved its reference.

Mr. JACOB THOMPSON expressed the hope that it would be put upon its passage without further delay.

Mr. DICKEY moved the previous question; which was seconded, and under its operation the bill was read a third time and passed.

Mr. EMBREE, from the Committee on Public Lands, submitted a resolution in relation to a section of land in Indiana; which he asked to have referred to that committee: agreed to.

Mr. GOGGIN, from the Committee on the Post Office and Post Roads, reported amendments to the House bill to establish certain post routes: referred to the Committee of the Whole on the state of the Union.

Also reported back, with an amendment, the Senate bill to declare the true intent and meaning, so far as relates to the franking privilege of members of Congress, of the act approved 1st March, 1847, and entitled "An act to reduce the rates of postage," &c.: referred to the Committee of the Whole on the state of the Union.

Also reported back, without amendment, Senate bill for the relief of Nathaniel Kuykendall; Senate bill for the relief of Creed Taylor; and Senate bill for the relief of Joseph T. Caldwell: severally read and committed.

Also reported back the communication received a few days since from the Postmaster General, giving a statement of the transactions of the Post Office Department during the year preceding the 1st July, 1847, with a recommendation that so much thereof as relates to additional allowances made to mail contractors be printed: agreed to.

BUSINESS ON THE SPEAKER'S TABLE.

Mr. G. S. HOUSTON moved that the House proceed to the consideration of business upon the Speaker's table: agreed to.

The SPEAKER laid before the House a communication from the War Department, transmitting a report of Messrs. Hardin and Brewster, late commissioners under the 17th article of the Cherokee treaty of 1835,–'36, called for by a resolution of the House: referred to the Committee on Indian Affairs.

The Senate bill authorizing the payment of interest upon the advances made by the State of Alabama for the use of the United States government in the suppression of the Creek Indian hostilities of 1836 and 1837 in Alabama, and for other purposes, was taken up, read twice, and referred to the Committee of the Whole on the state of the Union.

The Senate bill for the relief of the *bona fide* settlers under the acts for the armed occupation and settlement of a part of the Territory of Florida, was read twice, and referred to the Committee on Public Lands.

The Senate bill to authorize the district judge of the State of Tennessee to hold a special term was read twice, and referred to the Committee on the Judiciary.

The Senate act respecting the public archives of the State of Florida was read twice, and referred to the Committee on the Judiciary.

The Senate bill explanatory of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved 11th of February, 1847, was taken up, amended, read three times, and passed.

The Senate bill concerning school lands in the State of Florida was read twice, and referred to the Committee on Public Lands.

The Senate bill in amendment of an act to amend the act entitled "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenues of the Post Office Department," returned by the House with amendments, to a portion of which the Senate refused to agree, was taken up, and the action of the Senate thereon was stated.

Mr. GOGGIN moved that the House recede from the amendments objected to by the Senate, and moved the previous question; which was seconded, and, under its operation, the said amendments were receded from.

The House bill to provide for the ventilation of passenger vessels, and for other purposes, returned from the Senate with amendments, was taken up, and the amendments were read.

Mr. GRINNELL moved that the House concur with the Senate in their amendments; which motion was agreed to.

PENSION APPROPRIATIONS.

On motion of Mr. VINTON, the House resolved itself into Committee of the Whole on the state of the Union, (Mr. HOWELL COBB in the chair,) and resumed the consideration of the bill making appropriations for the payment of revolutionary and other pensioners of the United States for the year ending 30th June, 1849—the question pending being upon an amendment heretofore submitted by the gentleman from Georgia, [Mr. G. W. JONES,] providing that when the widow of a revolutionary pensioner shall apply for a pension, she shall not be obliged to go back to the period of the pension of her husband having been allowed for the proof of her claim to such pension—which he had moved as an amendment to an amendment submitted by the gentleman from North Carolina, [Mr. MCKAY.]

Mr. MCKAY raised a question of order upon the relevancy of the amendment.

The CHAIR ruled the amendment out of order.

Mr. JONES appealed from this decision; and, after debate, the House divided upon the question, "Shall the decision of the Chair stand as the opinion of the House?"—when no quorum voted.

The roll was called, the committee rose, and the chairman, in compliance with the rule, reported the names of the absentees, which were ordered to be entered upon the journal.

A quorum having appeared upon the call of the roll, the House again resolved itself into committee.

The question recurring upon sustaining the decision of the Chair, it was decided in the affirmative.

Mr. G. W. JONES then raised a point of order upon the amendment of the gentleman from North Carolina, [Mr. MCKAY.]

The CHAIR ruled it in order.

Mr. JONES appealed, and the committee sustained the decision of the Chair.

Mr. TOMPKINS proposed to amend the first section of the amendment by the gentleman from North Carolina, providing that applications in cases of disability now existing may be lawfully made within five years after the passage of this act.

The amendment to the amendment was agreed to.

Mr. JONES of Tennessee proposed further to amend the amendment, by striking out the words "five years from the time of disability," for the purpose of showing that the original amendment would be to increase the burden upon the treasury, instead of diminishing it. It was the case now, that many pensioners did not come forward to prove their claim to pensions for perhaps more than twenty-five years after their disability was received. Many cases of this kind of procrastination had come to his knowledge. But this amendment will force such men to come forward within five years, and so commence their drain upon the treasury at a much earlier day, perhaps, than they would without it.

His amendment was rejected.

And then, the question recurring on the adoption of the first section of the amendment by the gentleman from North Carolina, it was agreed to.

The second section, submitted by Mr. MCKAY, was then reported.

Mr. DUNCAN moved to amend this proposition by striking out all after the words commencing with "completion of proof," and insert "time of the application therefor is made at the proper office."

Mr. D. said it would be observed that, as the amendment now stands, the pension is to take effect only from the time of the completion of the proof at the Pension Office. It sometimes happens that delays are induced by misconstructions of law at the office. The amendment which he proposed was to guard against the consequences of such misconstruction, and to allow the pension to commence from the time the pensioner makes his application.

Mr. D.'s amendment was then rejected; and the second and third amendments by Mr. MCKAY were also successively rejected.

Mr. JONES of Tennessee then proposed to amend, by an additional section, repealing the proviso of the second section of the act providing for the payment of revolutionary pensions, approved June 30, 1847.

Mr. J. said this was a proposition to repeal a proviso which had given rise to a troublesome question of construction at the Pension Office. Its effect would be to overrule the decision of the Commissioner, that when a widow applies for the pension which had been allowed to her husband, she must go back and establish her claim upon the proof of the facts on which her husband's pension rested—the old woman must go back and hunt up the records, and prove again that her husband was actually in the service of the United States. The operation of the proviso was oppressive and wrong, and he hoped it would be repealed.

This amendment was agreed to.

The committee then rose and reported the bill and amendments.

Mr. STEPHENS moved the previous question, which was seconded; and under its operation the amendments were severally concurred in, and the bill was ordered to be engrossed, was read a third time, and passed.

NAVAL PENSIONS.

On motion of Mr. VINTON, the House again resolved itself into the Committee of the Whole on the state of the Union, (Mr. D. P. KING in the chair,) and proceeded to the consideration of the bill making appropriation for the payment of navy pensions for the year ending 30th June, 1849; which was read.

Mr. BAYLY took the floor, and spoke as follows:

I believe, Mr. Chairman, I have never before availed myself of the latitude of debate allowed in Committee of the Whole, to discuss subjects not immediately under consideration. But it will be recollected that several speeches have been delivered—doubtless designed to influence opinion out of this House—defending the power of Congress to prohibit slavery in the Territories of the United States, and also the expediency of its exercise. These speeches have not as yet been met. It is important they should be; and this is my apology for entering upon the discussion now. And in doing so, I shall be compelled, however reluctantly, to repeat, to some extent, views which I had the honor to present at the last session of Congress.

I wholly deny the power of Congress to legislate for the Territories in respect to their domestic affairs. Sir, this government is one of delegated powers; and all powers not delegated in the constitution, by the very terms of that instrument, are reserved to the States and the people. The Congress has no more authority to exercise a power not delegated, than it has one absolutely prohibited. This government possesses no sovereignty. It is true, the States have delegated to it the exercise of certain sovereign powers; but the sovereignty itself is in the people, and is inalienable. This government has no innate powers. Its powers are all derivative. These positions will not be disputed by any one who understands the first principles of the republican faith. Bearing them in mind, I ask in what clause of the constitution do you find the power *to legislate* at all, much less to adopt *irrevocable* legislation relative to the internal affairs of the territories which we now hold, or may hereafter acquire? Mark, I do not ask for the power to propose *forms of government* to the territories, but for the power *to legislate* for them in respect to their domestic affairs. I do not concede the first; but it is not necessary for my argument that I should dispute it. I know it has been exercised from the foundation of the government; and some very sound republicans have regarded it as fairly an incident to the power of acquiring territory. This is not satisfactory to me. I have great doubts about our power to establish for the territories even temporary governments, and these doubts are strengthened by the proceedings of the convention which framed the constitution. On the 18th of August, Mr. Madison submitted, in order to be referred to the committee of detail, among others, the following power as proper to be added to those of the general legislature:

> "To dispose of the unappropriated lands of the United States.
>
> "To institute temporary governments for the new States arising therein."

The first branch of this proposition was virtually adopted. What became of the second? It shared the fate of the proposition to confer upon Congress the power to grant charters of incorporation, to establish a university, and to construct canals, &c. The convention refused to confer the power contained in it. In the only territories which we then possessed, a temporary government already existed, and the convention was willing to leave it to the people of the territory themselves to make such alterations as might become necessary. I am very much inclined to the opinion, that the only legitimate authority which the territorial governments possesses over the people—I speak of the people at large, and not the officers of the territorial governments—is derived, not from the action of Congress, but the acquiescence by the people of the territories in them. We have performed the part of another Locke, and proposed constitutions in which the people of the territories have acquiesced; but they have derived their sanction rather from the last proceeding than the first. Be this, however, as it may, I say the power of legislation is a very different thing.

This is no fanciful distinction. It is one which is very clear to my mind, and was familiar to the framers of our constitution.

A constitution is that by which the powers of government are prescribed and limited; a law, by which the conduct of individuals is regulated and controlled. A constitution is a rule of action to the officers and the different departments of the government; a law, the rule of action to the community at large. No matter from what source a constitution proceeds, all those who take and hold office under it, are bound by it as long as they do so. It is their commission. By accepting office under it, they have consented to be bound by its provisions. And not only may public officers become bound in taking office under it by a constitution which has been proposed to them by others, but a whole community may assent to it by complying with its forms. But very different is the condition of the people at large with respect to laws. I know of no way by which a community can assent to a law, except in its recognition or enactment by a legislative body composed of their representatives. A constitution is the *form* of action; legislation is *action* itself. The one is the means; the other the result.

This is a distinction familiar in our history. Our forefathers never objected to the British King granting to the colonies charters containing forms of government; and they never were regarded as acts of legislation, which could only be instituted by Parliament. They were restrictions on the government, voluntarily imposed by the government itself, for the benefit of the colonies. But they always denied the right of the mother country to legislate in reference to the domestic affairs of the colonies. These charters were little else than constitutions, in our familiar political sense of the term, and in many instances were acquiesced in by the people long after the British authority was expelled;—indeed, in one case, until within a very late period. In others, they were changed in a short period after the declaration of independence, either at the instance of the colonies themselves, or in obedience to the recommendation of the Continental Congress; but generally by conventions, having no direct authority to do so. And in consequence, at one time, the validity of those constitutions was very much questioned. This was particularly the case in Virginia. The convention that framed her late constitution convened without any sanction of law; and it was not deputed by the people with express reference to the formation of a constitution. The result was, that its authority was questioned. But it was maintained "that the people had received it as a constitution. The magistrates and officers, down to a constable, had been appointed under it. The people had felt its operation and acquiesced; and it is confessedly their assent which gives validity to a constitution." These views prevailed, and the constitution, thus indirectly receiving the sanction of the people, endured for more than half a century; and even after such a lapse of time, many of our people were unwilling to change it for any other. In my view of the case, the territorial governments which we have established have derived their sanction from the same source.

I recur to the question I just now asked: In what clause of the constitution do you find the power of Congress to legislate for the territories relative to their domestic affairs?

The clause from which the power in Congress to legislate for the territories is most usually derived, by those who contend for it, is the 2d clause of the 3d section of the 4th article, which is in these words:

> "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, *the territory or other property* belonging to the United States."

Now, it is perfectly evident, from the language itself, that the authority given is over the territory as property. The term "territory" is here used in a very common sense, as synonymous with land; and it is concerning this, when it belongs to the United States, about which Congress may "make all needful rules and regulations." And it may, without doubt, under the authority given, pass such laws concerning the public lands situate in the territories as to it may seem needful. But surely this clause confers no power upon Congress to make rules and regulations concerning *persons* in the territories, or their private property. It is only concerning "the territory or other property *belonging* to the United States," that we can make rules and regulations.

When the convention which framed the constitution designed to confer powers of legislation, it used appropriate language to convey its meaning and language very different from that of the clause under consideration. And here permit me to remark, before I refer to the clause in which this is done, that the constitution is as remarkable for its literary execution, as for the great political wisdom embodied in it. There are no useless phrases; there is no tautology; there is no looseness of expression. The precise term, appropriate to convey the idea designed to be conveyed, is always used. Those who have studied the debates of the convention, must have been struck with the care and minuteness with which the exact meaning of every word and term was criticised. There is no instance where, when different phraseology is used, it is not designed to convey different meanings. When the convention designed to confer upon Congress the power of legislation, they did not use ambiguous and doubtful expressions, but such as are precisely appropriate to express the idea. This is done in the section in which the authority is conferred upon Congress "to exercise exclusive legislation in all cases whatever over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Here are words used appropriate to confer the power of legislation; and you are not permitted to suppose that the convention designed to confer the same power in another clause, when they use different language, not at all appropriate. Indeed, in this clause, the power of legislation over distinct places is conferred; and if there was any other over which it was designed to be conferred, here was the proper place to have done it; and doubtless the place where it would have been done. For the convention evinced, as was very natural, a purpose of grouping all similar powers together.

But, so far from this being the case, the clause under consideration is not found in the section of the article containing an enumeration of the powers of Congress, but in the one containing restrictions upon the States. The constitution is very remarkable for its order and arrangement; attention to which, in construing its different provisions, is exceedingly important. The preamble declares what are the ends to be attained by it.

The 1st article refers to the legislative department. Its first section provides that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The next seven sections prescribe the mode of election, the qualification of members, and the form of proceeding in the two Houses. The 8th section defines the powers of Congress. It commences: "The Congress shall have power," and then follows an enumeration of the distinct and substantive powers of Congress, among which is the power of legislating for several different places; but the territories are not of the number. The 9th contains the absolute prohibitions upon Congress; and the 10th, the absolute prohibitions upon the States.

The 2d article relates to the Executive. It prescribes the mode of election, the qualification and the duties of the President.

The 3d is concerning the Judiciary, and regulates its powers and duties.

The 4th article—the one in which the clause under consideration is found—contains restraints upon the States, coupled with the grant of power to the general government to the extent of those restraints, but to no greater extent. This will be apparent upon a careful examination of its different sections. The 1st section declares that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." Here the States are restrained from passing any law which shall impair the full faith and credit which this section declares shall be given to the public acts, records, and judicial proceedings of the several States; and the power is given to Congress to provide for securing to them that full faith and credit. The 2d section declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." This section restrains the States from passing laws interfering with the rights of general citizenship, which are secured to all the people of the United States, and enables Congress to pass laws to secure them.

The second clause of this section declares—

> "A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be *delivered up*, to be removed to the State having jurisdiction of the *crime*."

This clause forbids the States from making their territory an asylum for fugitives from justice from the other States; and empowers Congress to pass laws providing for the manner in which the fugitive shall be delivered up.

The 3d clause declares that—

> "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall *be delivered up* on claim of the party to whom such service or labor may be due."

This clause is similar to the other. The States are prohibited from passing laws to obstruct the recovery of fugitive slaves, and empowers Congress to provide by law how they shall be delivered up.

The 3d section prohibits the States from forming a new State within any of their jurisdictions, or by the junction of two or more States without the consent of Congress; and it authorizes Congress to admit into the Union all other new States not thus formed.

Then comes the clause under consideration:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

But for this clause, the States within which the territory and other property of the United States might be situated, could legislate in reference to it, precisely as they can legislate in reference to the land and other property of individuals. And this clause was designed to restrain this right in the States by virtue of their general sovereignty, and confers the power on Congress to make all of those rules and regulations.

The 4th section declares that—

> "The United States shall guaranty to every State in the Union a republican form of government, and shall protect each of them against invasion; and, on the application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence."

This clause (as Mr. Madison says in the Federalist) presupposes the existence of a republican form of government in the several States; and it is designed to prohibit them from forming a monarchical, or any other than a republican form of government; and lest, perchance, it might be attempted upon the pretext that a republican government did not afford a sufficient protection against invasion and domestic violence—which notion a good many people at that time entertained—the last clause was inserted to provide against it; and it imposes the duty in the first case, without qualification, upon all the States to protect each of them against invasion; but, to prevent them from interfering unasked with the domestic affairs of any of the States, they are only to act, in the second, upon the application of the State itself.

The 5th article provides the mode in which amendments of the constitution are to be made; the 6th secures the supremacy of the constitution and laws of the United States; and the 7th provides for the manner of the ratification of the constitution. This is the whole of the constitution as it came originally from the hands of its framers. It will be seen that it contained many restraints upon the States, but comparatively few upon the general government. Most of its restrictions were such as grew out of its character as one of delegated powers. This excited the jealousy of the States; and they proposed a number of amendments, every one of which created additional restraints upon Congress, but not one enlarging its powers. The most important of which is the 10th, which declares:

> "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Thus showing that the feeling which prevailed was hostile to enlarged powers in this government; and in construing the constitution, the rule should be, to carry out the spirit in which it was adopted.

It is seen that each clause of the 4th article is in keeping with the rest, and that in every one of them there is a restraint of power in the States, and a correlative power conferred upon Congress; and in no instance does the power conferred upon Congress go any further than to supply in it the power prohibited to the States. When, therefore, you have ascertained the extent of the power prohibited to the States, you have ascertained the extent of power conferred upon Congress.

It seems to me that there can be no doubt about these principles. How do they apply to the case in hand? We have seen the extent of the prohibition upon the States; to that extent, and no greater, is power conferred upon Congress. The States are forbidden "to dispose of, or to make rules and regulations respecting, the territory or other property belonging to the United States;" and the power to make such is confided to Congress, with the restriction that they shall be "*needful* rules and regulations." This is the extent of the powers prohibited and conferred; and it is seen that they are commensurate.

It will hardly be contended that the clause in question prohibits the States in which the public lands are, from legislating upon the subject of slavery, or any other than the public lands and other property of the United States; or that it confers any power on Congress over slavery in those States, or over anything else than the property of the United States. As far as the States are concerned, there is no difference of opinion. But is there any difference, in this respect, between the States and the Territories? The power in Congress, conferred by the clause under consideration, "to dispose of, and make all needful rules and regulations respecting, the territory or other property of the United States," is not confined to the Territories. Congress has the same power to make these rules and regulations in the States where "the territory or other property of the United States" is situated, as it has in the Territories. And this power is constantly exercised without question. But does any one suppose that that power authorizes Congress to legislate in reference to any other subject within the States, than the territory and other property of the United States? Does it authorize Congress to interfere with the subject of slavery in those States? If it does not in the States, why should it in the Territories?

Before dismissing this branch of the argument, I desire to call the attention of the committee to the precise language of the constitution. It is, "the Congress shall have power to dispose of, and make all needful rules and regulations respecting, *the territory or other property belonging to the United States*." The word used is "THE TERRITORY *or other property belonging to the United States*," and not the word "*Territories*," as it is usually quoted by those who contend that the clause confers powers of legislation on Congress.* Now, if the clause had been as it is quoted, there would have been more plausibility in the argument. Then it might have been argued with some show of reason, that the rules and regulations which Congress was authorized to make, was respecting "*the Territories*" as political organizations; but the fact that that word is not used, which was the appropriate one to convey that meaning, but the singular "*territory*"—and that, too, in connexion with "*other property belonging to the United States*"—shows that it was in reference to the territory as land, as property, *belonging* to the United States, that Congress was to make rules and regulations, and not in respect to the Territories as political bodies.

It appears to me very clear that the second clause of the 3d section of the 4th article confers upon Congress no power of legislation for the Territories now held, or hereafter to be acquired, except such as may concern the Territories *as property*. It is not pretended to be derived from any other clause. Those who talk about its being an inherent power, do not derive it from the constitution, but from some other source than the constitution; whence, I am sure I do not know, as I never heard till lately that this government possessed any powers not granted to it in the constitution, either expressly or by implication.

I have thus shown that the constitution confers no authority upon Congress to legislate for the Territories, except in reference to the public lands. I now take higher ground. I maintain that not only no such authority is delegated by any provision in the constitution, but that it is in direct conflict with some of them, and with the spirit of the whole instrument.

The constitution of the United States provides for the admission of new States into the Union. The third clause of the second section of the first article declares, "that representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, excluding Indians not taxed, three-fifths of all other persons."

Here we find, that representation of slaves is expressly provided for in new States to be admitted into the Union. This proves conclusively that the framers of the constitution contemplated the future admission of slave States. The new States to be admitted, which were more particularly in the mind of the convention, were undoubtedly those which it was contemplated would be carved out of the territories which we then possessed, and which it was daily expected we would acquire by the cession of the States. It was known to the framers of the constitution that territorial governments would, from necessity, precede the organization of States. Can any one at all conversant with the history of the constitution for a moment believe that it would have been adopted, if it had been understood that Congress might prohibit slavery in Territories? Sir, if there was one feeling which more than any other characterized the proceedings of the convention, it was a settled distrust on the part of the southern States of the northern and eastern States on the subject of slavery. The constitution itself shows this. Look at the guarantees and safeguards contained in it, which were insisted upon by the south as "*sine qua nons*." With these notorious facts staring us in the face, can any one believe that this means of war upon slavery—the right of legislation for the territories upon the subject of slavery, more dangerous than any other—would have been quietly conceded by the south? Sir, it is impossible. Who, at all acquainted with the history of those times, believes for a moment that the constitution ever would have been adopted, if it had been understood that it conferred such a power upon Congress? When the south insisted upon safeguards and guarantees in one part of the constitution as a condition of their adopting it, can any one believe they would have conceded in other parts powers which would make them all nugatory? There is no one who believes this. Then the solemn question arises, which I beg gentlemen to consider calmly,—Can this constitution last, if powers are exercised in violation of it, the grant of which would have prevented its adoption?

The constitution guarantees to each State a republican form of government—the fundamental principle of which is the right of self-government. The very definition of tyranny is to be subject to laws, in the enactment and continuance of which we have no voice; the very definition of republicanism is the right to govern ourselves. And yet gentlemen professing to be republicans come here, and not only claim the right to legislate for a people without consulting them, but absolutely to make that legislation irrevocable!

This attempt on the part of Congress to legislate for the Territories is in violation of a fundamental principle, to maintain which our forefathers waged a war of seven years' duration, and of unparalleled hardships and suffering. The British government claimed the right to legislate for the colonies in reference to their internal affairs. But the colonists resisted, upon the ground that it was the essence of tyranny to subject men to laws, in the enactment of which they had no voice. It was proposed to remove this objection, by granting them representatives in Parliament. But the colonists declined it, upon the ground that Parliament even then would not have the essentials which make representation a safeguard. These are, that the representative should feel his own laws, and that those upon whom they are to operate should have a periodical power of removing him. The people of the colonies would have no power to remove a member of Parliament elected in Great Britain; nor would the laws passed by a majority in that country, but operating exclusively in this, affect any individual of that majority. Such a representation, therefore, was regarded as worse than a mockery, as, by being present there by our representatives, it would seem to sanction laws passed in violation of the essentials of representation. And this essential principle, in the maintenance of which our forefathers poured out their blood like water, lies at the very foundation of our system of government, and suggested the existing distribution of powers between the General and State governments. All general powers are delegated to the first, and all local powers are reserved to the last. Look through the whole range of congressional powers, and you do not find one which, when exercised, does not operate upon the people of the whole country, and affect the constituents of every representative who exercises them. All local matters are left exclusively to the States. And this is done as much because the vital principle of representation requires it, as because we have not the local knowledge which would enable us to legislate wisely. How violently do these principles of our system conflict with the power now claimed, to legislate in reference to the internal affairs of the territories! The precise portion of the people upon whom alone the laws are to operate, are exactly the only portion who would have no hand in their enactment; and the constituents of the representative who passed them, and the representative himself, would be entirely exempt from their operation. Could there be a better description of tyranny than this? And yet persons, calling themselves republicans, maintain it! I had hoped that such doctrines would have been left to the advocates of despots.

In this connexion, I desire to read an extract from the writings of John Taylor, of Caroline, of whom Mr. Jefferson said he had never written a line which he did not approve:

> "But this feudal power of annexing conditions to the settlement of a conquered or acquired territory, by the government of the country making the acquisition, has ever been exploded as tyrannical both here and in England. One of our principles in the colonial state was, that emigrants to such territories carried with them their native rights. The colonists claimed the rights of Englishmen, and not only obtained them, but have, I hope, greatly extended them. But this would not be the case if our emigrants should be subjected to a diminution of their native rights by the pleasure of Congress. All of them enjoyed the right of forming local constitutions and laws before their emigration. If Congress cannot legislate over the States from whence they removed, and may do so by annexing conditions to a trust, over that which the emigrants from these States may create, it is obvious that these citizens must have lost some very important native rights by an emigration from one part of our country to another. If the colonists emigrating from England were correct in asserting by force of arms that they brought with them all the rights conferred by the English system of government, our emigrants may also contend that they carry with them all the rights conferred by our system. *Among these, the unconditional right to make their own local constitutions and laws, without being subject to any conditions imposed by an extraneous authority, has been the most important, and universally exercised by every State in the Union.*"

Every one of these principles applies, with increased force, to citizens of any of the States emigrating to the Territories. They carry with them all their rights, the most important of which is the right of self-government.

The practice of the government has not, as seems to be taken for granted in this debate, been inconsistent with these views, as I will proceed to show; and I must here beg the indulgence of the committee for some minuteness of detail.

First, of the ordinance of 1787, about which we have heard so much. In the first place, I do not hesitate to say that that ordinance originated in a palpable usurpation of power by the Congress of 1787. The articles of confederation conferred upon Congress no such power. Indeed, they conferred scarcely any legislative powers whatever. The powers conferred were mainly executive, and related to our foreign relations. The Congress, under the confederation, was rather a many-headed executive than a legislative body.

The Congress of 1784 seemed to concede that they could not legislate for the Territories; and they attempted to give validity to what little they did, as a "*compact*."

This will be apparent from the history of the transaction.

On the 1st day of March, 1784, the delegation in Congress from Virginia executed her deed of cession of her territory northwest of the river Ohio, in which she ceded to the United States "all of her right, title, and claim *as well of soil as of jurisdiction*;" but stipulated "that the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and shall be protected in the enjoyment of their rights and liberties."

It must be borne in mind, in this connexion, that at that time there were no white inhabitants in the territory except these Canadian and French inhabitants and settlers.

On the 19th of April, 1784—not quite two months after the execution of the deed of cession—Congress took into consideration the report of the committee, consisting of Messrs. Jefferson, Chase, and Howell, of a plan for a temporary government of the Western Territory.

The plan as reported contained this clause—

> "That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in the punishment of crimes whereof the party shall have been convicted to have been personally guilty."

And on the motion of Mr. Spaight, these words were struck out.

On the 23d of April, Congress resumed the consideration of the subject, and adopted several articles which they directed should be formed into "*a charter of compact*." The following is the substance of those articles:

The 1st declares, "that so much of the territory ceded, or to be ceded, by individual States to the United States, as is already purchased, or shall be purchased of the Indian inhabitants and offered for sale by Congress, shall be divided into distinct States;" and it then goes on to prescribe the manner of their formation.

The 2d provides that the *free* male settlers of full age, "on any territory so purchased and *offered for sale*," shall meet within their State "for the purpose of establishing a temporary government, to adopt the constitution and laws of any of the original States; *so that such laws nevertheless shall be subject to alteration by their ordinary legislature*," &c.

The 3d provides that when any such State shall have 20,000 inhabitants, a convention shall be called of them, to form a permanent constitution and government for themselves. But it is provided that the temporary and permanent governments be established on these principles as its basis:

1st. That they shall forever remain a part of this confederacy of the United States of America.

2d. That they shall be subject to the articles of confederation in all those cases in which the original States shall be so subject, and to all the acts and ordinances of the United States in Congress assembled, conformable thereto.

3d. That they in no case shall interfere with the primary disposal of the soil by the United States in Congress assembled, nor with the ordinances and regulations which Congress may find necessary for securing the title in such soil to the *bona fide* purchasers.

4th. That they shall be subject to pay a part of the federal debts contracted, or to be contracted, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States.

5th. That no tax shall be imposed on lands the property of the United States.

6th. That their respective governments shall be republican.

7th. That the lands of non-resident proprietors shall in no case be taxed higher than those of residents within any new State, before the admission thereof to a vote by its delegates in Congress.

The 4th provides "That when any of *said States* shall have of free inhabitants as many as shall then be in any one of the least numerous of the thirteen original States, *such State* shall be admitted by its delegates into the Congress of the United States on an equal footing with the said original States."

The last provides "That the preceding articles shall be formed into *a charter of compact*; shall be duly executed by the President of the United States in Congress assembled; shall be promulgated, &c.; and shall be unalterable *from and after the sale of any part of the territory of such State*."

This, with the article relative to slavery, which we have seen was stricken out, comprised the substance of the report of the committee.

It will be seen that, during the interval which would elapse before the formation, in the mode directed, of a temporary government, and the adoption of the constitution and laws of some one of the original States, there was no provision for the preservation of the peace, &c. in the Territory. To remedy this, Mr. Gerry moved a proposition, which was adopted, in these words:

> "That measures, not inconsistent with *the principles* of the confederation, and *necessary* for the preservation of peace and good order among the settlers in any of the said *new States*, until they shall assume a temporary government as aforesaid, may, from time to time, be taken by the United States in Congress assembled."

It will be seen from this analysis of the first action of Congress relative to the territory of the United States—action which was participated in by the first statesmen of the republic, comprising such men as Jefferson, Sherman, and Gerry—that, notwithstanding Virginia had ceded her jurisdiction as well as soil, they did not propose to legislate for the Territories, or to interfere with their government, any further than the absolute necessity of the case required. This "charter of compact," as they called it, secured to the people in the Territories the full right of self-government at as early a period as possible, and in the meantime no other authority was assumed than so much as might be necessary to keep the peace; and it is very obvious that they were tempted to this last solely by the necessity of the case. There are no restrictions on the settlers in the formation of their government, and in their subsequent legislation, any further than was necessary to secure to the United States its right of property in the public lands, and to preserve the fidelity of the confederation. The condition of Virginia's deed of cession made the first imperative; and the feeling of disloyalty to the Union, which had been displayed in some parts of the confederacy, and the still greater fear of it from the character of the only then inhabitants of the western territory, made the last expedient.

I think it pretty evident, from the language they used, that the framers of this charter supposed that their authority to grant it grew out of their ownership of the soil, and their supposed rights to annex conditions to the sale of it in the shape of a compact with the purchasers. The words I have emphasised in the analysis I have made, I think, shows this. Be that as it may, it is seen that no attempt at legislation was made; and that in the charter no restrictions were made, except such as related to the two points I have mentioned. The only other one—that relating to slavery—was stricken out.

On the 16th of March, 1785, Mr. King renewed the anti-slavery restriction, which had been defeated in 1784; and it was again defeated.

The subject seems not to have been taken up again until 1787, when the ordinance of that year was passed.

That ordinance was itself rather in the nature of a charter than an ordinary law. It was rather the framework—the form of a government—than an ordinary act of legislation. The language of its enacting clause is different from that usually employed. It is, "Be it ordained," &c., and "Be it ordained and declared." And, except in the second section, in which the course of descents is prescribed, and the mode of conveyance established, which they seemed to think had an immediate connexion with their authority over the public lands, and in the sixth article, in which slavery is prohibited, nothing is done which partakes of the nature of legislation. It provides for the appointment of a governor, the election of a general assembly, prescribes the qualification of officers and of voters, &c.; and it goes on to "declare" most of the fundamental principles of our government, very much in the manner of a bill of rights, and it secures the right of self-government—the most important of them. It provides expressly that "the legislature shall have authority to alter the laws as they shall think fit"—an authority which they freely exercised. But, a short time after the organization of the Territorial government of Ohio, the legislature under it altered the provisions of the ordinance in many particulars. I recollect particularly in reference to the course of descents and the mode of conveying property; and they adopted, in the words of the Virginia statute, the laws of England in force prior to the fourth year of James I. Now, it seems very much like absurdity to me, to say that Congress has the power to legislate for the Territories, and at the same time concede that the Territorial legislatures may repeal laws enacted by it.

The ordinance, on its face, shows that its framers considered that they were organizing "a State," for which the ordinance was to be a temporary constitution until it could substitute one better suited to its wants. In its first section it declares "that the said Territory, for the purposes of a temporary government, be one district—subject, however, to be divided into two districts." Afterwards it says: "The legislatures of these districts or *new States* shall never interfere in the *primary* disposal of the soil *of the United States*." Again it says: "And whenever any of the said States shall have sixty thousand *free* inhabitants therein, such *State* shall be admitted, *by its delegates*, into *the Congress* of the United States, on an equal footing with the original States." It is very evident that the Congress considered that they were organizing States—new States, in contradistinction to "the original" thirteen; to the admission of which, "by its delegates, into Congress," the only obstacle seemed to be a requisite population.

In 1787, as in 1784, Congress very evidently distrusted their powers to legislate for the Territories; and hence they attempted to give some show of validity to such portions of it as partook of a legislative character, by styling them "a compact," some sorts of which Congress had a right, by a vote of nine States, to sanction. But concede it to be, in its nature, a compact, and such an one as Congress could enter into, and yet you do not give it validity.

To create a compact, there must be parties able and willing to contract, and who, in fact, do contract. Now, who in this case were the parties? The ordinance declares the parties to be "the original States and the people and States in the said territory." Now, sir, I choose on this point to rest upon the fact rather than the law. Which of the original States ever assented to this compact? Not one! It is true, Virginia was asked to consent to a change which was proposed in the boundary of the States, which it was designed to create in the territory northwest of the Ohio, and the number of them, from the number and boundaries specified in her deed of cession. To this Virginia assented; but she was not asked to assent, and she did not assent, to any other part of the ordinance. There is no pretence that any other State acted in the matter at all. Will it be said that they assented through their delegates in Congress? They had

*See the address of the democratic members of the legislature of New York, April, 1848.